



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO THE TOWN OF RICH CREEK FOR THE RICH CREEK WASTEWATER TREATMENT PLANT

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) by the Board to the Town of Rich Creek for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "The Facility" means the Rich Creek Wastewater Treatment Plant in the Town of Rich Creek, Virginia and owned by the Town of Rich Creek.
7. "The Town" means the Town of Rich Creek, a political sub-division of the Commonwealth of Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Regulations" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
10. "The Permit" means Virginia Pollution Discharge Elimination System (VPDES) Permit No. VA0021041, issued to the Town by the Board, pursuant to the Va. Code and the Regulations, to allow the discharge of wastewater from the Facility into state waters.

SECTION C: Findings of Fact and Conclusions of Law

1. The Permit was issued to the Town on June 16, 2003.
2. The permit required the Town to submit to the DEQ a survey of all Industrial Users discharging to the POTW within 180 days of the effective date of the permit. The survey was due to the DEQ no later than December 19, 2003.
3. The permit also requires that the Town submit DMRs no later than the 10th day of month after monitoring takes place. The DMRs for October and November 2003 and February 2004 were postmarked or faxed to the DEQ on November 12, 2003, December 11, 2003, and March 15, 2004, respectively.
4. On April 14, 2004, the DEQ issued a Notice of Violation, W2004-04-W-0010 for the failure to submit the Pretreatment survey by December 19, 2003 and failure to submit the three DMRs by the 10th of the month.
5. On May 5, 2004, the DEQ received the survey of all Industrial Users discharging to the POTW and the DMR submittals have been timely since April of 2004.
6. The Permit required the Town to begin monitoring for E. coli bacteria no later than December 16, 2003. The Town was required to obtain at least 12 data points and no later than June 2, 2004, submit a written notice, with the data collected during the demonstration period, to the Department. The purpose of the monitoring and demonstration period was to show that by meeting the Permit's Total Residual Chlorine ("TRC") effluent limitation, the Town was also meeting the E.coli standard.
7. The Department has not received the written notice with data. On August 10, 2004, the Department issued a Notice of Violation to the Town for failing to comply with the requirements listed above. The Town of Rich Creek responded to the Notice of Violation, as required.
8. The Department has received a sufficient number of E. coli studies from other facilities that confirm the direct relationship between meeting TRC effluent limits and meeting the E. coli standard that it is no longer necessary for the Town to conduct the E. coli study.

9. A review of the effluent data submitted to the Department indicates that the Town was in compliance with the TRC limit during the period from December 2003 through July 2004. It may therefore be inferred that the Town did meet the E.coli standard and did not adversely impact state waters.
10. Accordingly, the Department determines that the Town does not need to conduct the study.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§62.1-44.15(8a) and (8d) orders the Town, and the Town agrees, to pay a civil charge of One Thousand Six Hundred Forty-One Dollars (\$1641) in settlement of the violation noted herein. Payment shall be by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Town shall indicate that the payment is submitted pursuant to this Order. The Town shall pay the civil charge shall in full no later than 30 days after the effective date of the Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the Facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. The Town declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director, or his designee, and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification,

The Town of Rich Creek
Rich Creek Wastewater Treatment Plant

standard, or requirement otherwise applicable.

11. By the signature below, the Town of Rich Creek voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of SEPTEMBER, 2005.

Steven A. Dietrich
For Robert G. Burnley, Director
Department of Environmental Quality

The Town voluntarily agrees to the issuance of this Order.

By: Darlene French
Darlene French
Mayor, Town of Rich Creek

Date: 6.10.05

Commonwealth of Virginia
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 10th day of June, 2005, by Darlene French, Mayor, for the Town of Rich Creek, on behalf of the Town.

Pamela J. Kantas
Notary Public
My commission expires: April 30, 2008